REMARKS

Claims 1-15 and 17 remain in the application. Claim 16 has been cancelled.

The objections to the specification and claims have been addressed by amendment.

The §112 rejection of claim 15 is traversed because it is made without basis, and is a simple recitation of the rejection, without any evidence to support the rejection, nor to explain why the rejection is made. The claim is clear on its face, and uses simple language in a conventional manner, with support in the specification. If the rejection is to be sustained, applicant requests that the basis for the rejection be provided.

§102 Rejections

Claim 14 was rejected under §102 as anticipated by Bruwer. Bruwer discloses a flashlight that replaces simple mechanical control switches with a microchip control.

The rejection of claim 14 is inadequate because it fails even to allege that the cited reference discloses each element of the claim, and some of the alleged elements are not found in the reference.

First, the action alleges that Bruwer discloses "a switch", citing a simple open/closed switch 102 in Figure 1. However, applicant is not merely claiming a switch, applicant is claiming a switch with a range of "conditions." The action fails to allege that the cited switch has a range of conditions, and thus the rejection fails.

If the claim were rejected on the position that a simple binary switch with only two conditions ("open" and "closed") constitutes a "range", applicant traverses such an inappropriate definition, because in common usage, and as intended here, a range means that there is at least an intermediate condition between two extreme conditions.

Second, the action alleges that Bruwer discloses "a dimmer facility," citing a passage in which is it speculated that a battery with a microchip could be inserted into a conventional flashlight to provide a dimming function. The reference merely speculates on this possibility, without actually disclosing how it is actually possible. Moreover, the mere idea of "dimming" does not disclose applicant's actual claimed element of a facility to select a dimmed output level below a maximum. The cited passage does not disclose this selection feature.

Moreover, the cited reference describes this vague dimming concept in conjunction with another product (a battery pack) and not in conjunction with the product being cited for other elements. Merely picking and choosing different elements from different products (whether or not in a single patent) is inadequate to support a §102 rejection when there is no connection between those elements, and particularly when there is no disclosure that the elements are connected as claimed. Even if a smart battery pack with a dimming function disclosed applicant's dimmer facility, and the switch 102 disclosed applicant's switch, the references does not show these elements connected as claimed. The traversal of a §102 rejection does not require applicant to point out that the combination of elements alleged would not yield the claimed invention, or even be workable, but it appears that even those standards are not met.

Third, the action again cites something less than is claimed. The action makes no allegation that the cited reference discloses "an electronic controller operably connected to each of the lamp, the switch, the power storage element, and the dimmer facility" (emphasis added). The cited "controller" appears connected to a bulb (but not necessarily with a variable output level), a switch (lacking a range of conditions), and a power source 101, but not a dimmer facility. Thus, the cited element fails to disclose the claimed element. Moreover, the fact that the same document speculates about a dimming function in a different hypothetical product, does not constitute a connection between a controller and a dimmer facility.

Fourth, the action fails even to allege that the cited reference discloses claimed operability features of the controller. Not only are these features not disclosed, but there is no evidence provided that the cited reference is even capable of such operability, nor that it could be modified as such, nor even combined with other references to provide this feature.

For any one of the above reasons, the rejection of claim 14 is inadequate, and thus the claim should be allowable.

Claim 15 does not appear to have been substantively rejected.

Claim 17 was rejected under §102 as anticipated by Yaeger. Yeager discloses a flashlight with several LEDs that can be illuminated in different numbers or intensities.

The rejection of claim 17 is traversed because the rejection fails even to allege that the cited elements are disclosed by the cited reference, and because the reference does not disclose all of the elements of the claim.

The first error of the rejection is in failing even to allege that the reference has a switch operable through a range of conditions as stated. Even if the action had cited the multi-positional switch, that does not disclose the operability limitation recited in the claim preamble. The Yaeger switch does not disclose a range of conditions between released and fully actuated. After all, there are many types of multi-position switches that do not have a range between released and actuated (e.g. rotary switches, slide switches.) There is nothing to suggest that the vague description of Yaeger's switch discloses applicant's particular claimed switch.

The second error in the rejection of claim 17 is in the unjustified allegation that the cited reference actually discloses "actuating a switch to an intermediate condition between a released position and the fully actuated position." The cited lines do not disclose this. The mere disclosure of a multi-positional switch in conjunction with variable intensity lamps does not disclose this particular mode of operation. There are a multitude of other modes that the cited referenced could be operated in other than the claimed mode, and there is no evidence that the claimed mode is contemplated, possible, or disclosed in the cited reference. Thus, because the references does not disclose a switch operation with an intermediate condition, claim 17 should further be allowable.

The third error in the rejection of claim 17 is in the unjustified allegation that the above claimed switch operation to an intermediate condition would provide the claimed result of illuminating "the light source at a dimmed level." The action does not cite any aspect of the reference to support this allegation, and the disclosed multi-positional switch appears incapable of this function. There is no evidence that this switch has a released position and an actuated position.

The fourth error is in the bald allegation that the reference discloses actuating a switch to a fully actuated condition, and the resulting maximum illumination. The action cites no evidence, and the reference does not disclose this capability.

For any one of the above reasons, claim 17 should be allowable.

§103 Rejections

Claims 1-6 , 8-9, and 11-12 were rejected under 35 USC §103(a) as unpatentable over Parsons in view of Bruwer.

Parsons discloses an elongated flashlight with lamp and switch at opposite ends. Bruwer discloses a flashlight with a electronic processor.

Claim 1 should be allowable because neither reference discloses certain claimed features, because the references when combined do not yield the claimed invention, and because there is no legitimate motivation to make the proposed combination, which is based on hindsight.

The first error in the rejection of claim 1 is in the action's incorrect assertion that Parsons discloses "at least two independent electrical paths between the first and second ends." Without explanation, the action cites Figures 7-9, illustrating a tailcap switch and a switch circuit board, but which disclose nothing about paths between the ends of the flashlight. The action further cites an extended paragraph, with no indication of which element of Parsons is considered an electrical path. Moreover, the cited passage describes the switch at one end, and not the electrical paths between the flashlight ends. Accordingly, claim 1 should be allowable because neither cited reference discloses multiple electrical paths, such as the multiple paths 24, 26 indicated in applicant's Figure 1, in addition to the conduction provided through the batteries themselves.

The second error in the rejection of claim 1 is in that adding the processor of Bruwer to Parsons would not yield the claimed invention. Even adopting a controller for the manually-switched Parsons would not provide the multiple electrical paths.

The third error in the rejection of claim 1 is that there is no motivation or incentive to modify Parsons with the processor of Bruwer. The action asserts the motivation "in order to provide efficient, numerous, and intelligent functionality to the device." Yet there is no evidence in Parsons that any of these qualities are particularly desired, or lacking, nor that the secondary reference is superior in any of these respects. Simply because the secondary reference employs puffery touting its reliability does not provide motivation for another reference to adopt its features. There must be evidence that the quality is desired, and that adopting the feature would

yield an improvement. But the action provides no evidence that Parsons is lacking in any respect, nor that adding a controller would yield an improvement.

In particular, there is no evidence to suggest that Parsons would be more efficient if a Bruwer controller were used. Nor is there any logic in the notion that Parsons would wish to be more "numerous," nor that adding a controller would make any functionality more "numerous." While one may casually assert that an electronic controller is more "intelligent," it is tautological to suggest that being more intelligent is the motivation to add a controller, any more than "being bigger" is motivation to increase size. What evidence is there to suggest that Parsons would benefit from being more "intelligent"? The articulated motivations appear arbitrary, partially nonsensical, and apparently calculated to give the appearance of articulating a motivation, without there actually being one.

The action further lifts the Bruwer specification's stated advantages of being "smaller, more reliable, less costly, easier to seal, and less vulnerable to corrosion..." without any evidence that these advantages are motivations in Parsons. Where is the evidence that Parsons desires to be smaller, or that it has any inadequacies of reliability or environmental seal? Parsons appears to be a robustly gasketed device, not needing a controller simply to provide a leak-resistant switch. Moreover, Bruwer makes these assertions of improved reliability when contrasting with an old fashioned lantern type flashlight, invoking internal contact corrosion, even slide button switches (col. 1, lines 48-57, col. 2, lines 50-64). In fact, Parsons shows a modern flashlight with sophisticated gasketing, and is the subject of a patent filed after Bruwer. It appears that Parsons may in fact have superior reliability and resistance to leaks and corrosion than Bruwer, which appears to consider itself an improvement over a primitive flashlight, not a sophisticated one like Parsons.

Thus, inasmuch as Parsons has achieved excellent sealing and reliability, it teaches away from the adoption of a system that may have inferior sealing and other qualities, which is the fourth error in the rejection of claim 1. Moreover, with the addition of a new component (a controller) to an apparently compact flashlight (Parsons) there is additional doubt whether that would in fact provide a size reduction. The action offers no evidence to suggest that changing switching or control systems would reduce size, nor that Parsons desires a reduced size.

For any of the above reasons claim 1 should be allowable over the cited references.

Claims 2-7 depend from claim 1 and should be allowable for the above reasons and because of the features set forth therein.

Claim 4 should be allowable for the additional reason that the Office action fails to point out where the cited reference discloses a switch operable within a range of conditions, and operable to transmit a state corresponding to the condition. The action makes a bald assertion that the invention is disclosed, without referencing any evidence. Then, the action quotes Bruwer about intelligent control by solid state devices, which appears to have been selected based on a word search for "state," even though the term is used in a different meaning, and has no logical connection to the claim.

Claim 5 should be allowable for the additional reason that the office action fails to point out where the cited reference discloses a switch having "an electrical state based on a degree of externally applied force." The action entirely neglects to address this feature, and thus claim 5 should be patentable for this additional reason.

Similarly, the action entirely neglects to address the actual claimed features of claim 6. It is not enough to cite a prior art switch that has certain commonalities. There must be evidence provided to show that the claimed features are disclosed. Yet there is no such evidence offered with respect to the respective electrical components, nor a common contact, nor sequential contacting. In the absence of even an assertion of what components of the cited reference disclose the claimed components and features, claim 6 should be patentable for this additional reason.

Claim 7 was rejected as above, and further in view of Hauck. The rejection in view of Parsons and Bruwer is traversed because there is no assertion that either reference discloses a resistor, nor the electrical states and different resistance values. Regarding Hauck, the reference does not disclose what is asserted. While Hauck has resistors, there is no evidence that they operate as claimed with a switch having electrical states including a plurality of different resistance values. Moreover, the articulated motivation to add resistors from Hauck appears contrived, and not based on any improvement to be gained in the primary reference. The assertion is that adopting resistors would provide a "cheap and simple means," yet there is no

evidence that this would make the Parsons flashlight cheaper or simpler. More likely, adding components would make it more expensive and complex, teaching away from the modification. Further, the asserted motivation that the Hauck resistors would provide a means for "determining the state of operation/dependent variable/output for the device." This appears to have no relation to the issues of a flashlight such as Parsons, and includes terms that are incomprehensible in the context of the cited references and applicant's claims. In addition, it is absurd to suggest that employing a switch with different resistance states is a matter of design choice, when the action has not provided any evidence that such a switch even exists.

Claim 8 should be allowable for the reasons noted above with respect to claim 1, and because of the features set forth therein.

Claim 9 should be allowable for the reasons noted above with respect to claim 6, and because of the features set forth therein.

Claim 10 should be allowable for the reasons noted above with respect to claim 7, and because of the features set forth therein.

Claim 11 should be allowable for the reasons noted above with respect to claim 1, and because of the features set forth therein. In addition, claim 11 should be allowable because the action does not indicate where either reference discloses a controller operable to provide momentary illumination when a first force is applied and released, nor a controller operable to provide sustained illumination in response to the application and release of a greater force. There is no evidence in the action that the cited controller has either of these functionalities, nor the combination of functionalities.

Claim 12 depends from claim 11 and should be allowable for the above reasons and because of the features set forth therein. Moreover, claim 12 recites further controller functionality that is not disclosed. The action makes no effort to indicate where the cited references disclose the cessation of illumination upon a second application of force.

Claim 13 depends from claim 11 and should be allowable for the above reasons and because of the features set forth therein. Moreover, claim 13 recites a plurality of switch contacts and resistors that are not disclosed in the Hauck reference, as argued above with respect to claim 7.

All pending claims should be allowable for the above reasons. Reconsideration of the application is respectfully requested.

Respectfully submitted,
LANGLOTZ PATENT WORKS, INC.

Bennet K. Langlotz
Attorney for Applicant
Registration No. 35,928

LANGLOTZ PATENT WORKS, INC.
PO Box 759
Genoa, NV 89411
Telephone 877 230 5950
Facsimile 877 230 5950
Email patent@langlotz.com